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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/593,156
Filing Date: September 18, 2006
Appellant(s): BJORK ET AL.

John Castellano
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/01/2009 appealing from the Office action mailed 08/18/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,778,820	Van der Lely	7-1998
5,769,023	Van der Lely	6-1998
6,263,832	Van den Berg	7-2001

6,543,381

Birk et al

4-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 7-8, 10-11, 14-17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Van der Lely et al (5,778,820).

In re claims 1 and 14, with reference to col.1 lines 25-40, col.6 lines 46-48, and the abstract, Van der Lely et al. disclose a milking station for milking animals including an entry (col.5 line 44) provided for allowing a milking animal to enter the milking station, a milking machine (6) provided for milking the milking animal, a first feeding device (15) provided for feeding the animal intermittently or continuously with feed, wherein the first feeding device is provided for terminating the feeding of the animal at a non-final stage of milking in order to secure that the animal has terminated to consume the feed when the milking is finished. Given the structure, the claimed method steps would be inherently performed.

In re claims 2 and 15, with reference to col.1 line 65-66 and col.2 lines 3-5, Van der Lely et al disclose a cleaning device for cleaning the teats of the animal, a device for applying teat cups (9) to the teats of the animal, and a device provided for drawing milk from the milking animal, and the first feeding device is provided for terminating the feeding of the animal at a non-final stage of milking which depends on action performed by the cleaning device, the device for applying teat cups to the teats, and the device for drawing milk from the animal. Given the structure, the claimed method steps would be inherently performed.

In re claims 3 and 16, with reference to Figure 1 and the abstract, Van der Lely et al disclose the milking machine is provided for drawing milk individually from each of the teats of the animal (shown in Figure 1, individual teat cups), and the first feeding device is provided for terminating the feeding of the animal at a non-final stage of milking which depends on actions performed by the milking machine. Given the structure, the claimed method steps would be inherently performed.

In re claims 4 and 17, with reference to the abstract, Van der Lely et al disclose the non-final stage of milking, at which the feeding of the animal is terminated, is a stage when the drawing of milk individually from the teats of the animal is finished for one, two, or three of the teats of the animal. Given the structure, the claimed method steps would be inherently performed.

In re claim 7, with reference to col.1 lines 30-40 and col.2 lines 25-30, Van der Lely et al disclose a time left to complete the milking is determined repeatedly during the milking, and non-final stage of milking at which feeding is terminated is selected as a stage of milking, at which a selected time is left to complete the milking.

In re claim 10, with reference to Figure 1 and the abstract, Van der Lely et al disclose the method is performed individually for each milking animal to enter the milking station.

In re claims 11 and 20, with reference to col.1 lines 16-23, Van der Lely et al disclose the milking station is an automated system, the milking machine is an automatic milking machine, the first feeding device is an automatic feeding device, and the method is performed automatically.

Claims 5-6 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van der Lely et al (5,778,820) in view of Van der Lely et al (5,769,023).

In re claims 5-6 and 18-19, Van der Lely et al ('820) disclose the claimed invention except for determining an expected milk yield.

However, with reference to col.3 lines 52-65, Van der Lely et al ('023) disclose a method of feeding cows during milking wherein an expected milk yield is determined for each of the teats of the animal, the non-final stage of milking, at which feeding is terminated, is selected as a stage of milking, at which a selected percentage of any expected milk yields has been drawn from the animal. The advantage of this is to not under-milk or over-milk the animal.

Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the milking system of Van der Lely et al ('820) with the determining of an expected milk yield as taught by Van der Lely et al ('023) in order to not under-milk or over-milk the animal.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van der Lely et al (5,778,820) in view of Van den Berg (6,263,832).

In re claim 8, Van der Lely et al disclose the claimed invention except for the time left to complete milking being calculated based on an expected milk yield.

However, with reference to col.2 lines 16-21, Van den Berg discloses a method of automatically feeding and milking animals wherein the time left to complete milking, which is determined repeatedly during milking, is calculated each time based on an

expected yield for the animal. The advantage of this is to not over-milk or under-milk the animal.

Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the milking system of Van der Lely et al ('820) to calculate the time left based on an expected milk yield as taught by Van den Berg in order to not over-milk or under-milk the animal.

In re claim 9, Van der Lely disclose the claimed invention except for a second feeding device.

However, with reference to col.1 lines 22-29 and col.2 lines 56-58, Van den Berg discloses after an animal has been milked and the food has stopped being supplied, the animal leaves the milking station and goes to a further feeding station, the animal is then fed at that feeding station for a predetermined amount of time. The advantage of this is to feed animals that may still need more food after the feeding and milking session.

Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the milking system of Van der Lely et al ('820) to include a second feeding device as taught by Van den Berg in order to feed animals that may still need more food after the feeding and milking session.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van der Lely et al (5,778,820) in view of Birk et al (6,543,381).

In re claims 12 and 13, Van der Lely et al disclose a computerized system for controlling and monitoring a milking station. Not disclosed is the computer program product.

However, with reference to col.3 lines 6-8, Birk et al disclose a computerized system for controlling and monitoring a milking station with associated software. The advantage of this is to run the program on the computer.

Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the computer system of Van der Lely et al ('820) to include a computer program product as taught by Birk et al in order to run the program on the computer.

(10) Response to Argument

A. 102(b) - U.S. Patent No. 5,778,820 to Van der Lely

In response to Appellant's arguments regarding claims 1 and 14 that Van der Lely does not disclose "terminating feeding of the milking animal at a non-final stage of milking in order to secure that the milking animal has terminated to consume the feed when the milking is finished" as set forth in claim 1, this argument is not persuasive. With reference to the abstract, the last 6 lines, Van der Lely discloses " *...fodder is distributed at least substantially uniformly over the actual feeding period so dispensing of fodder terminates and the feeding period ends approximately at the same time that the milking operation ends and the milking robot has removed the milking apparatus from under the animal so as not to impede the animal's exit from the feeding compartment.*". The distribution of fodder which corresponds to the Appellant's "feeding

of said milking animal". While the feeding period of van der Lely et al. would start shortly after the start of distributing the fodder and shortly after the termination of distributing the fodder. The ending of the feeding period of van der Lely et al. would be equivalent to Appellant's "terminated to consume the feed" in claims 1 and 14. Van der Lely et al. disclose a milking operation that end when with the removal of the milking apparatus from under the animal which corresponds to finishing of the Appellant's "milking". Since van der Lely et al. disclose that the "feeding period ends *approximately* at the same time that the milking operation ends" (not simultaneously as argued by the Appellant in the last paragraph of page 10). Using the term *approximately*, Van der Lely is inherently stating that there will be times that the feeding period ends after the milking operation ends, at the same time the milking operation ends, and there will be times that the feeding period ends before the milking operation ends, which would therefore meet the method and apparatus limitations in the claims.

In response to Appellant's arguments that Van der Lely discloses that consumption extends beyond milking and could never terminate during milking, this argument is not persuasive because Van der Lely et al. disclose in col.1 lines 56-61 that the "feeding period is approximately equal to the anticipated milking period for a relevant animal." It is noted that van der Lely et al. discloses in col. 2, lines 16-22, a feature of the invention is to feed the fodder more rapidly on a subsequent milking, when the feeding period extends beyond the milking period. Thereby to end the feeding period approximately at the same time as the milking operation ends on a subsequent milking. Further, because of the reasons stated above, using the term *approximately*

still allows for the feeding period to end before the milking operation ends, which would meet the broad limitation in the claims.

The Examiner would also like to point out that the claim limitation being argued reads "terminating said feeding of said milking animal at a non-final stage of said milking in order to secure that said milking animal has terminated to consume the feed when said milking is finished." (emphasis added) This would lead one to believe that not only could an animal terminated to consume the feed before the milking is finished but also at the same time that the milking is finished.

B. 103(a) - U.S. Patent No. 5,778,820 to Van der Lely and any other combination

In response to Appellant's argument that the rejections to claims 5, 6, 8, 9, 12, 13, 18, and 19 must be reversed because of the rational argued under claims 1 and 14, this argument is not persuasive because of the Examiner's answers to the Appellant's arguments above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Monica Williams/

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